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10/062,366

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Michael Wayne Brown

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EXAMINER

MALHOTRA, SANJEEV

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL WAYNE BROWN,
RABINDRANATH DUTTA, MICHAEL A. PAOLINI,
and NEWTON JAMES SMITH, JR.

Appeal 2009-002340
Application 10/062,366
Technology Center 3600

Decided:¹ July 30, 2009

Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-47 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention is directed to a method for detecting the unauthorized use of an account. The method receives a request from a vendor to authorize an account transaction and sends a request for authorization to an account holder who provides a personal identification number (PIN). The PIN may be selected from a normal PIN or a duress PIN. If the duress PIN is received remedial actions including sending an instruction to the transaction card issuer, vendor, police, security, or emergency contact take place. (Spec. 2:27-3:8). Claim 1, reproduced below, is representative of the subject matter of appeal.

1. A method for detecting unauthorized use of an account comprising:
 - receiving a first request from a vendor to authorize an account transaction;
 - sending a second request for authorization to an account holder;
 - receiving a first electronic response from the account holder providing a personal identification number selected from a normal personal identification number and a duress personal identification number; and
 - initiating remedial actions if the duress personal identification number is received.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Zingher	US 5,731,575	Mar. 24, 1998
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The following rejections are before us for review:

1. Claims 1-47 are rejected under 35 U.S.C. § 102(b) as anticipated by Zinger.

THE ISSUE

At issue is whether the Appellants have shown that the Examiner erred in making the aforementioned rejections.

This issue turns on whether Zingher discloses both “receiving a first request from a vendor to authorize an account transaction” and “sending a second request for authorization to an account holder.”

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:²

FF1. Zingher discloses a system for the discrete identification of a duress transaction at an ATM machine (Abstract).

² See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

FF2. Zingher discloses that a customer can alert the police that a crime is taking place without alerting the criminal by entering a personal distress or emergency number in place of the ATM stored pin (Abstract).

FF3. Zingher in Figure 7 discloses that when an access number is entered 50 it is checked to see it is correct 55. If the pin access number is a personal distress number 65, the alarm 70 is triggered.

FF4. Zingher does not disclose in Figure 7 disclose both a first request from a vendor to authorize an account transaction and sending a second request for authorization to an account holder.

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art.

ANALYSIS

The Appellants argue that the rejection of claims 1, 21, and 40 is improper because the Examiner has misinterpreted what is being claimed with respect to the “first request” and “second request” (Br. 8). The

Appellants argue that the Examiner's position is improper because it requires the first and second steps to be duplicative (Br. 8).

In contrast the Examiner has determined that the rejection of the claims as anticipated by Zinger is properly applied. The Examiner has determined that Zinger discloses the recited "first and second requests" in Figure 7 at items 50, 55, and 65 (Ans. 9-10).

We agree with the Appellants. Claim 1 includes language which requires *both* "receiving a first request from a vendor to authorize an account transaction" and "sending a second request for authorization to an account holder." (Emphasis added). Zinger does disclose a system for the discrete identification of a duress transaction at an ATM machine in which a customer can alert the police that a crime is taking place without alerting the criminal by entering a personal distress or emergency number in place of the ATM stored pin (FF1, FF2). Zinger discloses that an access number is entered, checked to see it is correct, and if a personal distress number is entered, then triggering an alarm (FF3). While Zinger does disclose a first request to the account holder for a PIN number, there is no second request as claimed. Zinger in Figure 7 does not disclose both a first request from a vendor to authorize an account transaction and sending a second request for authorization to an account holder (FF4). For these reasons the rejection of claim 1 is not sustained. The rejection of claims 21 and 40 which contain similar limitations is not sustained for these same reasons. The rejection of dependent claims 2-20, 22-39, and 41-47 which depend from the independent claims 1, 21, and 40 respectively is not sustained for these same reasons as well.

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CONCLUSIONS OF LAW

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-47 under 35 U.S.C. § 102(b) as anticipated by Zinger.

DECISION

The Examiner's rejection of claims 1-47 is reversed.

REVERSED

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